


STAMP & RETURN

Lowell W. Paxson / Chairman

December 12, 2003

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The Honorable Michael K. Powell
 Federal Communications Commission
 445 Twelfth St., NW
 Washington, D.C. 20554

Federal Communication Commission
 Bureau / Office

Re: ACCELERATE THE DTV TRANSITION
RECOVER THE ANALOG SPECTRUM SOONER
ADOPT MULTICAST MUST CARRY NOW
CS Docket No. 98-120 -- Don't Delay

Dear Chairman Powell:

The fact that the Commission is considering indefinitely delaying a decision on full digital multicast must-carry is very disturbing. As it did last year, the Commission apparently is considering releasing another *Further Notice of Proposed Rulemaking* that would request additional information about full digital multicast must-carry as well as the public interest obligations of broadcasters in the DTV world. Mr. Chairman, this is a terrible idea. It is bad public policy and wholly unnecessary. Further delaying full digital multicast must-carry would be detrimental to the digital transition and the recovery of the analog spectrum.

The Commission already has a fully developed record that makes plain the huge benefits that full digital multicast must-carry would bring and the legal basis for acting. Linking the must-carry proceeding to the public interest proceeding only promises another extended delay. Frankly, if the Commission wants to complete the digital transition during this decade and place reclaimed spectrum into the hands of the commercial wireless providers and public safety operators that want and need it, there is no more time to waste. I urge you to nix the *Further Notice*, set forth the multicast must carry rules and address broadcasters' public interest obligations without further delay.

There simply is no need for a *Further Notice* concerning multicast must-carry. The Commission has a crystal clear record before it demonstrating that a sensible transition plan requires full digital multicast must-carry. The record demonstrates, for example,

that broadcasters across this nation are struggling to complete construction and to continue operations of unwatched DTV channels; that these added DTV costs will impair the quality and viability of the over-the-air broadcasting service if additional revenue streams are not made available for broadcasters; and that cable operators steadfastly refuse to carry broadcasters' digital services. Moreover, Congress has required that 85% of viewers receive broadcasters' over-the-air signals before the transition can end. This record shows that without full digital multicast must-carry, the transition will drag on past the foreseeable future and that consequently, over-the-air broadcasting will be a significantly weaker competitive force as the DTV era continues.

This weakened over-the-air broadcasting system would be in stark contrast to the robust and vibrant over-the-air broadcasting industry whose protection Congress sought to ensure through the 1992 Cable Act and the importance of which the Supreme Court recognized in the *Turner* cases. Rarely does the public interest weigh so heavily in favor of one side as it does toward broadcasters on this issue. Here is what the Commission knows from the existing record:

- It knows that the future vibrancy of over-the-air broadcasting is in danger in the absence of multicast must-carry.
- It knows that cable operators will not be harmed one iota by full digital multicast must-carry.
- It knows that full digital multicast must-carry will bring increased localism and diversity through access to broadcast spectrum for traditionally underrepresented programmers and underserved communities.
- In addition, it knows that public safety wireless operators are fighting spectrum congestion and interference to provide essential local and homeland security functions while the slow DTV transition ensures that broadcasters will be using the 700 MHz spectrum earmarked for those purposes for a long time to come.

Further delay will only harm the multitudes of viewers that would benefit from the increased programming options, whereas ordering multicast must carry will harm no one. It is hard to imagine an initiative more clearly aligned with the public interest than full digital multicast must-carry.

On the other hand, while the correct path forward with respect to DTV broadcasters' public service obligations is far from clear the record is already before the Commission. Following the submission of the Gore Commission Report to the White House in December, 1998, the FCC initiated a Notice of Inquiry on December 20, 1999 seeking comments on broadcasters' public interest obligations as they transition from analog to

digital. Numerous comments were with the FCC by April, 2000 and later that year the Commission initiated a further round of Notices seeking comment on digital broadcasters public interest obligations. This past January, the FCC solicited updated comments on all of these proceedings and the comments have been before the Commission since May of this year. The issue of the public interest obligations of digital television broadcasters simply awaits FCC action.

PCC agrees with the Commission's view that resolving DTV broadcasters' public service obligations is of paramount importance. PCC has been an active participant in that proceeding since 2000 and has long been an advocate of cleaning up the airwaves and enhancing broadcasters' service to the public. Indeed, PCC has authored several initiatives aimed at making broadcasters take full responsibility for raising the standards of over-the-air television and eliminating the foul language, overt sexuality, and wanton violence that too often characterizes broadcast programming today. Unfortunately, there does not appear to be any consensus at this time about what is the correct regulatory approach to these issues. **It is ludicrous to hold up the five-year old DTV proceeding where the correct answers could not be more manifest in order to conclude the four-year-old DTV public service proceeding.**

Moreover, linking these proceedings will net neither the Commission nor the public any benefit. The Commission's goal should be the promotion of a strong DTV broadcasting industry with strong public service requirements. Unfortunately, if it does not act now, the Commission will ensure a weakened DTV broadcasting industry with a decreasing ability to satisfy strong public service requirements. There is no justification for putting multicast must-carry behind the public service proceeding under these circumstances. It goes without saying that broadcasters must adhere to whatever public service obligations the Commission ultimately imposes, so it would be a great deal more reasonable for the Commission to seize this opportunity to secure the future of over-the-air DTV broadcasting by ordering full digital multicast must-carry and then turn immediately to the issue of DTV broadcasters' public service obligations. If the Commission feels it is necessary to make a commitment on the public service issue at this time, perhaps the best course would be to decide the multicast must-carry issue immediately and separately set out a time-frame in which it will commit to concluding the long-pending DTV public service proceeding so those obligations are announced prior to the multicast must carry rules going into effect.

The DTV must-carry issue is crying for a decision and the Commission should stop putting it off. Full digital multicast must-carry will benefit a wide range of interests – from over-the-air television viewers to public safety operators – while harming no one. These types of opportunities do not come along every day and the Commission should not ignore this one. Cable operators continue to threaten lawsuits over the Commission's decision, but must-carry remains the indisputable law of the law, and full digital multicast must-carry is no more than the logical outgrowth of analog must-carry – that is what

Congress said! All television viewers should have access to all broadcasters' free over-the-air content. That was what Congress intended and that is what the Commission should ensure. There is only one way to do that: **Order full digital multicast must carry now**, and return to the DTV public service proceeding as soon thereafter as possible.

Sincerely,



Lowell W. Paxson
Chairman & CEO
Paxson Communications Corporation

cc: Honorable Kathleen Q. Abernathy
Honorable Michael J. Copps
Honorable Kevin J. Martin
Honorable Jonathan S. Adelstein
Catherine Crutcher Bohigian
Jonathan Cody
Stacy Robinson Fuller
Jordan Goldstein
Johanna Shelton
Rick Chessen
Kenneth Feree
Jane Mago
John Rogovin
Members of the Senate Communications
Subcommittee and the House
Telecommunications Subcommittee